C.S. 1021 (4)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 157 / 2004

Petitioner : Dr. O.P. Tiwari S/o G.P.Tiwari, Aged about 40 years, Assistant Surgeon, Veterinary Department, R/o Veterinary Hospital Campus, Bilaspur, Dist : Bilaspur-(C.G.)

Versus

Respondents :

1. State of Chhattisgarh Through the Secretary, Animal Husbandry, DKS Bhawan Mantralaya Raipur, District-Raipur (CG)

2. The Director, Veterinary Health Services, Opp. Ghasidas Mahant Granthalaya, Near Collector Office, Raipur, District-Raipur (CG).

3. The Joint Director, Veterinary Health Services, 1st Floor, Composite Building, Opp. Collectorate Bilaspur, District-Bilaspur (CG)

4. The Under Secretary Veterinary Health Service, DKS Bhawan Mantralaya Raipur-(C.G.), Dist : Raipur-(C.G.)

5. Dr. S.P.Singh S/o late D.P.Singh, Aged about 51 years, Assistant Veterinary Surgeon O/o Joint Director Veterinary Service Bilaspur Composite Building, 1st Floor Opposite Collectorate, Bilaspur-(C.G.)

P.R. No. 15/6/04 Presented by Shri Gulshan Chhabra 14-6-04. R.

RECEIVED-COPY 14/6/04 Clerk to A.G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

1. **Particulars of the Petitioner** :

As mentioned in the cause title above.

2. **Particulars of the respondents** :

As mentioned in the cause title above.

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

(Division Bench)

CORAM : Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri Sunil Kumar Sinha, J.

WRIT PETITION NO. 1571 OF 2004

Dr. O.P. Tiwari

Versus

State of Chhattisgarh & others

Present: Mr. B.P. Sharma, Advocate with the Petitioner in Person.

Mr. Yashwant Singh, Govt. Advocate for respondents 1 to 4.

Mr. Manindra Shrivastava, Sr. Advocate with Mrs. Smitha Ghai, learned counsel for respondent No.5.

ORDER
(Passed on 6th May 2005)

The following Order of the Court was passed by A.K. Patnaik, CJ: -

2. The petitioner is an employee of the Veterinary Department of the Government of Chhattisgarh. He was posted as Incharge, Veterinary Disease Investigation Laboratory, Bilaspur in 1992. By an order dated 31.05.2003 he was transferred from Bilaspur to Korba and respondent No.5- Dr. S.P. Singh was transferred from Korba to Bilaspur and posted in his place. By a subsequent order dated 06.10.2003 the State Government cancelled the transfer order dated 31.05.2003. Aggrieved by the said order dated 06.10.2003 canceling the transfer order dated 31.05.2003, respondent No.5 filed a writ petition bearing W.P.No.3227 of 2003 and on 17.10.2003, the said writ petition was disposed of by the learned Single Judge of this Court with the direction that respondent No.5 will make a representation to the Under Secretary, Government of Chhattisgarh, Veterinary Department and the Under Secretary, Government of Chhattisgarh, Veterinary Department will decide the representation within a period of one month after considering all his grievances and till then the

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respondent No.5 will not be relieved from his place of posting if he is not already relieved. Pursuant to said order passed by this Court in W.P.No.3227 of 2003, the State Government passed an order dated 12.11.2003 staying the order dated 06.10.2003 by which the transfer order dated 31.05.2003 had been cancelled. Thereafter, by order dated 05.06.2004, the State Government finally cancelled the order dated 06.10.2003. Aggrieved, the petitioner has filed this writ petition praying for quashing the said order dated 05.06.2004 passed by the Government of Chhattisgarh annexed to the writ petition as Annexure P-27.

3. The petitioner and his counsel Mr. B.P. Sharma submitted that the order dated 31.05.2003 transferring the petitioner to Korba and transferring respondent No.5 to Bilaspur in place of the petitioner, had been passed by the Government to accommodate respondent No.5. Relying on the averments made in the writ petition, the petitioner and Mr. Sharma submitted that respondent No.5 was working as Chief General Manager / General Manager of Haribhoomi whose headquarter was at Bilaspur and he was a very powerful personality and had connection with influential political persons and on account of the influence of respondent No.5, the authorities have passed the order dated 31.05.2003 transferring him from Korba and posting him at Bilaspur in place of the petitioner as well as the subsequent order dated 05.06.2004. Mr. Sharma, learned counsel for the petitioner referred to the provisions of Rules 9 & 16 of the Madhya Pradesh Civil Services (Conduct) Rules, 1965 and submitted that the said Rules are applicable to Government Servants working under the Government of Chhattisgarh and that the said Rules prohibit Government servants from conducting or participating in the editing or management of any news paper or other periodical publication and from engaging directly or indirectly in any trade or business or undertake any other employment. He submitted that the respondent No.5 contrary to the said provisions of the said Rules is working for the news paper Haribhoomi as General Manager and this is established by the various documents annexed to the writ petition. Mr. Sharma cited the decision of the Supreme Court in State of N.C.T. of Delhi & another vs. Sanjeev alias Bittoo reported in 2006 AIR SCW 1987 for the proposition that an administrative action can be set aside by the Court if there is manifest error in the exercise of administrative power or the exercise of the power is manifestly arbitrary. The petitioner also cited the judgment of the Supreme Court in B.

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Varadha Rao vs. State of Karnataka & Others reported in AIR 1986 SC 1955 wherein it has been held that an order of transfer which is not made in public interest but for collateral purposes and with oblique motives is vitiated by abuse of powers. He also relied on the decision of the Supreme Court in N.K. Singh vs. Union of India & Others reported in (1994) 6 SCC 98 wherein the scope of judicial review in relation to an order of transfer has been laid down and it has been held therein that an order of transfer can be interfered with where the allegations of mala fides have been made on affidavit in the petition challenging the order of transfer. The petitioner relying on the averments in paragraph 5.30 of the writ petition submitted that under the transfer policy of the Government of Chhattisgarh a transfer order can only be issued with the prior approval of the Chief Minister and if the same has been issued it is to be cancelled also with approval of the Chief Minister, but in this case the name of the petitioner was never proposed by the department for his transfer nor the file of the petitioner's transfer or transfer of respondent No.5 was ever produced before the Chief Minister or the Minister of the department. The petitioner and his counsel Mr. Sharma vehemently submitted that this is a fit case in which the Court should interfere with the impugned order dated 31.05.2003 transferring the petitioner from Bilaspur to Korba and transferring the respondent No.5 from Korba to Bilaspur in place of the petitioner as well as the impugned order dated 05.06.2004 in Annexure P-27 by which the earlier order canceling the said transfer order was cancelled.

4. Mr. Yashwant Singh, learned Government Advocate appearing for respondents 1 to 4, on the other hand, relied on the averments made in the return filed on behalf of respondents 1 to 4 and submitted that the transfer order dated 31.05.2003 was passed for administrative exigencies. He submitted that the said transfer order dated 31.05.2003 had been cancelled by order dated 06.10.2003 but when the respondent No. 5 approached this Court in W.P.No.3227 of 2003 and this Court passed orders on 17.10.2003 in the said writ petition directing the respondent No.5 to file representation before the Government and directed the Government to objectively consider the said representation and pass orders, the Government of Chhattisgarh first stayed the said order of cancellation by order dated 12.11.2003 and thereafter cancelled the order of cancellation of the transfer by the impugned order dated 05.06.2004 in

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Annexure P-27. Mr. Yashwant Singh in particular relied on the averments in paragraphs 29 & 30 of the return in which respondents 1 to 4 have relied on administrative exigencies as well as the order dated 17.10.2003 passed by this Court in W.P.No.3227 of 2003 and has also stated that the transfer order of the petitioner was issued after following the due procedure and by the competent authority.

5. Mr. Manindra Shrivastava, Sr. Advocate assisted by Mrs. Smitha Ghai, learned counsel appearing for respondent No.5 relying on the averments in the return filed on behalf of respondent No.5 submitted that the respondent No.5 had remained posted at Korba for about 12 years which is a tribal area. A government servant after serving in a tribal area for minimum three years is entitled to be rotated to a non-tribal area and by the transfer order dated 31.05.2003 the respondent No.5 was therefore transferred from Korba to Bilaspur on his own request and there was nothing unusual about the said order of transfer. Mr. Shirvastava also submitted that in para 28 of the return filed by respondent No.5, the respondent No.5 has specifically and categorically denied the allegations made by the petitioner against respondent No.5 that respondent No.5 was political person and that the respondent No.5 was working in a private company and was taking care of a local news paper Haribhoomi.

6. The decision of the Supreme Court in **State of N.C.T. of Delhi & Another vs. Sanjeev alias Bittoo** (supra) cited by Mr. Sharma is not a decision in which the scope of judicial review in respect of an order of transfer has been laid down. In the said decision, the Supreme Court has discussed the scope of judicial review generally in respect of administrative and legislative action and not specifically in respect of an order of transfer. In **B. Varadha Rao vs. State of Karnataka & Others** (supra) the Supreme Court has held that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and does not result in any alteration of any of the conditions of service to his disadvantage and that a Government servant is liable to be transferred to a similar post in the same cadre and this is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless his appointment itself is to a specified non-transferable post. In the said decision, Supreme Court has however

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held that if the power of transfer is abused, the exercise of such power is vitiated. In **N.K. Singh vs. Union of India & Others** (supra) the Supreme Court found that the allegations of mala fide against the order of transfer has been made by the appellant on affidavit and the Administrative Tribunal before whom the order of transfer was challenged rejected the application against the order of transfer without even requiring a counter affidavit to rebut the same and the Supreme Court held that the Tribunal's perception that the allegations made on affidavit by the appellant even without any rebuttal on the plea of mala fide was obviously incorrect.

7. Coming to the facts of the present case, although allegations have been made in the writ petition that the transfer order dated 31.05.2003 was issued by the Government only with a view to accommodate respondent No.5, the said allegations have been denied by respondents 1 to 4 in their return. In the return, respondents 1 to 4 have clearly stated that the transfer of the petitioner was on administrative grounds. The petitioner has remained in Bilaspur for more than 12 years beginning from 1992. The respondent No.5, on the other hand, had been at Korba for 10 years. Hence, the transfer of the petitioner to Korba and transfer of respondent No.5 to Bilaspur even if made on the request of respondent No.5 cannot be held to be mala fide unless a strong case of mala fide is established by the petitioner. The petitioner has alleged in the writ petition that respondent No.5 was connected with the news paper Haribhoomi and was in fact managing the same and for this reason he had political influence. The respondent No.5 has denied that he was in any way connected with the news paper Haribhoomi. Respondents 1 to 4 have also denied that the transfer of respondent No.5 from Korba was made to favour respondent No.5. It is, therefore, difficult to hold on these materials that the transfer of the petitioner from Bilaspur to Korba and of respondent No.5 from Korba to Bilaspur was vitiated by mala fide. Mere allegations of mala fide made in the writ petition unless established with materials cannot be a ground for the High Court to set aside an order of transfer on the ground of mala fide under Article 226 of the Constitution of India. This is thus not a case like the case in **N.K. Singh vs. Union of India & Others** (supra) where the allegations of mala fide were made but the same were not rebutted in the counter affidavits filed by the respondents. This is a case where though allegations of mala fide were made in the writ

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petition, the same have been rebutted in the counter affidavits / returns filed by respondents 1 to 4 as well as respondent No.5.

8. Regarding violation of Rules 9 & 16 of the M.P. Civil Services (Conduct) Rules, 1965 by respondent No.5, such violations of Conduct Rules may call for disciplinary action by the authorities for misconduct but cannot be a ground for refusal or allowing a transfer by the authorities. A separate writ petition bearing W.P.No.3649 of 2003 has been filed by two other petitioners making similar allegations against respondent No.5 and by a separate order we are disposing of the said writ petition with appropriate directions.

9. For the aforesaid reasons, we are not inclined to interfere either with the order of transfer dated 31.05.2003 or with the impugned order dated 05.06.2004 (Annexure P-27) and we accordingly dismiss the writ petition and vacate the interim order of status quo passed in this case on 19.08.2004. Considering however the facts and circumstances of the case, the parties shall bear their own costs.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge